

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

TERRI L. MUNGER)	
Claimant)	
VS.)	
)	Docket No. 163,479
KENTUCKY FRIED CHICKEN)	
Respondent)	
AND)	
)	
COMMERCIAL UNION INSURANCE COMPANIES)	
Insurance Carrier)	

ORDER

Claimant requested review of the preliminary hearing Order dated August 14, 1997, entered by Administrative Law Judge Bryce D. Benedict. The Appeals Board heard oral argument on February 4, 1998.

APPEARANCES

Larry G. Karns of Topeka, Kansas, appeared for the claimant. Kip A. Kubin of Overland Park, Kansas, appeared for the respondent and its insurance carrier.

RECORD AND STIPULATIONS

The record consists of the Award dated March 28, 1996, entered by Special Administrative Law Judge Douglas F. Martin; the Order dated August 25, 1997, entered by the Appeals Board; and the preliminary hearing Order dated August 14, 1997, entered by Administrative Law Judge Bryce D. Benedict. At oral argument before the Appeals Board, the parties confirmed that a transcript was not made of the hearing held before Judge Benedict on August 13, 1997. Also at oral argument, the parties agreed that this is a post-Award request for additional medical treatment brought pursuant to the preliminary hearing statute, K.S.A. 1997 Supp. 44-534a.

ISSUES

After reviewing the language of the original Award dated March 28, 1996, Administrative Law Judge Benedict denied claimant's post-Award request for additional medical treatment. Claimant requests the Appeals Board to review that denial. The only issues before the Appeals Board on this review are (1) whether the Appeals Board has jurisdiction to review the August 14, 1997, Order and, if so, (2) whether claimant is entitled to additional medical benefits.

FINDINGS OF FACT

After reviewing the entire record, the Appeals Board finds as follows:

(1) The parties stipulated claimant sustained personal injury by accident arising out of and in the course of her employment with respondent on October 6, 1991. In the original Award entered on March 28, 1996, Special Administrative Law Judge Martin found claimant had sustained a 47 percent permanent partial general disability.

(2) In addressing the issue of future medical care, Judge Martin wrote:

Claimant's request for future medical treatment from Dr. Sollars, mileage, and future medications as prescribed by Dr. Sollars, is granted, to the extent such medical treatment is reasonable and necessary, for one year only from the date of this order. Any surgery must be specifically authorized by further order of the Director, as must any treatment by any other physician. The limit on authorized medicals (and mileage) under this provision is up to \$2,000.00. Respondent shall be liable for nothing more than \$2,000.00 under this provision unless so ordered upon further application to the Director.

(3) Respondent and its insurance carrier requested Appeals Board review of the March 1996 Award. The only issue before the Appeals Board on that review was the nature and extent of claimant's disability. By Order dated August 25, 1997, the Appeals Board reduced the permanent partial general disability to 40 percent and adopted the other orders set forth in the Award.

(4) While the original Award was pending review before the Appeals Board, in June 1997 claimant filed a preliminary hearing application to request additional medical care. By Order dated August 14, 1997, the Administrative Law Judge denied claimant's request for additional post-Award medical treatment and this appeal ensued. In denying the request for medical benefits, the Administrative Law Judge found he did not have the jurisdiction to consider the request on its merits:

This Court is without jurisdiction to hear the Claimant's request for further treatment. The Award limited future medical benefits to a one-year period and that year has run. The language in the Award referring to treatment on further application pertained only to making an application for invasive treatment within that one year.

(5) This is a request for medical benefits which is brought pursuant to K.S.A. 1997 Supp. 44-534a and K.S.A. 1997 Supp. 44-551(b)(2)(C). The latter provides:

In any case in which the final award of an administrative law judge is appealed to the board for review under this section and in which the compensability is not an issue to be decided on review by the board, medical compensation shall be payable in accordance with the award of the administrative law judge and shall not be stayed pending such review. The employee may proceed under K.S.A. 44-534a and amendments thereto and may have a hearing in accordance with that statute to enforce the provisions of this subsection.

CONCLUSIONS OF LAW

Because the Administrative Law Judge determined he was without jurisdiction to hear and decide claimant's request for additional medical benefits, the Appeals Board has the jurisdiction and authority to review that question of law. See K.S.A. 1997 Supp. 44-551(b)(2)(A), which empowers the Appeals Board to review preliminary hearing decisions when the jurisdiction of the administrative law judge is at issue.

Having reviewed and considered the language utilized by the Special Administrative Law Judge in the March 1996 Award, the Appeals Board finds it did not terminate claimant's right to request additional medical benefits at the expiration of the one-year period in which claimant was authorized to treat with Dr. Sollars.

The Appeals Board finds the language in question awarded claimant conservative treatment with Dr. Sollars for a one year period without obtaining specific authorization from either the respondent or Director and that claimant was required to obtain prior approval from the Director in the event (1) the doctor wanted to perform surgery, (2) refer claimant to another physician, (3) the cost of the treatment was to exceed \$2,000, or (4) treatment was needed after the initial one-year period. The Appeals Board finds no limitation was placed on claimant's right to request additional medical treatment after the initial one year period had expired.

Based upon the above, the Appeals Board finds the Administrative Law Judge does have the jurisdiction to hear and determine claimant's request for medical treatment. Therefore, this proceeding should be remanded to the Administrative Law Judge for a determination on the merits.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated August 14, 1997, entered by Administrative Law Judge Bryce D. Benedict should be, and hereby is, set aside; and that this case is remanded to the Administrative Law Judge for a determination on the merits of claimant's request for additional medical treatment. The Appeals Board does not retain jurisdiction over this proceeding.

IT IS SO ORDERED.

Dated this ____ day of March 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Larry G. Karns, Topeka, KS
Kip A. Kubin, Overland Park, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director